

regulations. The Guides also describe certain conduct that may, in some instances, violate Sections 2 (a), (b), (c) and (d) of the Clayton Act. In addition, to the extent that certain conduct described by the Guides may substantially lessen competition in a properly defined antitrust market, it may violate Section 5 of the FTC Act. To the extent such conduct may tend to create a monopoly, it may also violate Section 2 of the Sherman Act. The conduct described by the Guides must be examined on a case-by-case basis to determine whether an applicable provision of law has been violated. Furthermore, in some instances, the Guides do not accurately represent current Commission policy and enforcement standards. Accordingly, the Commission has determined to repeal the Guides.

Authority: 15 U.S.C. 41–58.

List of Subjects in 16 CFR Part 248

Advertising, Cosmetics, Trade practices.

PART 248—[REMOVED]

The Commission, under authority of Sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends chapter I of title 16 of the Code of Federal Regulations by removing Part 248.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–19544 Filed 8–7–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Fraud Offenses That Involve Multiple Millions of Dollars in Losses

AGENCY: United States Parole Commission.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is establishing a dollar amount range of \$1 million to \$5 million for Category Six fraud offenses in the paroling policy guidelines at 28 CFR 2.20. Frauds that cause losses of over \$5 million will be rated Category Seven. At the present time, the Category Six offense severity rating is assigned to all frauds exceeding \$1 million. In some cases, decisions above the Category Six guidelines are

found warranted because the dollar losses greatly exceed those associated with ordinary cases of theft/forgery/fraud that are rated Category Six. The conversion of the open-ended dollar criterion for Category Six offenses into a range of \$1 million to \$5 million will provide the Commission with an appropriate benchmark to determine when dollar amount losses are so excessive as to require the offender to serve more prison time than indicated by the guidelines. This will permit increased consistency in the Commission's decisionmaking.

EFFECTIVE DATE: October 2, 1995.

FOR FURTHER INFORMATION CONTACT:

Pamela A. Posch, Office of General Counsel, 5550 Friendship Blvd., Chevy Chase, Maryland 20815. Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: Public comment was solicited by publication of a proposed rule at 60 FR 18379 (April 11, 1995). Some public comment argued that the guidelines of the U.S. Sentencing Commission are significantly less severe for theft, forgery, and fraud offenses committed on or after November 1, 1987. (The U.S. Parole Commission's jurisdiction is limited to offenders whose crimes were committed prior to November 1, 1987. See Section 235 of the Sentencing Reform Act of 1984, which appears as an Editorial Note to 18 U.S.C. 3551.) According to this comment, the revision of the guidelines is a step in the right direction, but has the effect of creating two classes of accountability from the same government, because significantly larger dollar amounts would be required for the sentencing guidelines to match those of the U.S. Parole Commission.

The Commission has compared the operation of its guidelines for theft, forgery, and fraud cases with those of the U.S. Sentencing Commission, as applied in actual practice. The conclusion is that the guideline ranges are, contrary to the public comment, roughly equivalent. This is because the parole guideline ranges are determined solely by reference to the dollar amount, whereas the sentencing guidelines begin with dollar amount but require upward adjustments for such typical aggravating factors (in large-scale white collar crimes) as “organizer or leader”, multiple victims, multiple counts, and refusal to accept responsibility. Frauds that cause losses of \$1 million or more usually involve some degree of organizational leadership, multiplicity of schemes and victims, efforts to deny responsibility, etc., sufficient to produce several upward adjustments. In this manner, the total offense level produces

a guideline range, in most cases, equal to or greater than the parole guidelines. For example, a conviction-offense fraud of \$750,000 with upward adjustments reflecting persistent fraudulent investment schemes by an unrepentant first offender can produce a sentencing guideline range of 46–57 months, which is greater than the corresponding parole guideline, even if the Parole Commission includes additional losses exceeding \$1 million (40–52 months).

Accordingly, the Commission decided to adopt its original proposal to set a range of \$1 million to \$5 million for Category Six offenses, and to rate fraud offenses exceeding \$5 million in Category Seven.

The Commission intends that the practical effect of this guideline revision will be to preclude decisions above the Category Six guidelines when the relevant dollar amount does not exceed \$5 million, except when non-monetary factors in aggravation (e.g., unusually vulnerable victims) warrant a decision above the guideline range in individual cases. The Category Seven rating will, for the most part, include cases in which above-guideline decisions would otherwise have been expected.

Finally, the Commission decided to adopt conforming amendments to the other offense examples listed in the guidelines that are rated by dollar amount (i.e., property destruction, counterfeit currency, antitrust offenses, insider trading, tax evasion, and currency offenses).

Implementation

The revised guidelines will be applied at any initial parole hearing or revocation hearing conducted on or after the effective date set forth above. The revised guideline will also be applied retroactively to prisoners who were given parole or reprieve decisions prior to that effective date, at the next statutory interim hearing conducted pursuant to 28 CFR 2.14, provided that application of the revised guideline results in a decision more favorable to the prisoner. For example, at a statutory interim hearing, a prisoner who was continued above the Category Six guidelines for a \$4 million fraud offense could argue for a release date within the Category Six guidelines if he can show that no other factor continues to justify a departure from the guideline range.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this proposed rule is not a significant regulatory action for the purposes of Executive Order 12866, and the proposed rule has, accordingly,

not been reviewed by the Office of Management and Budget. The proposed rule, if adopted, will not have a significant economic impact upon a substantial number of small entities, within the meaning of the regulatory flexibility act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, probation and parole, prisoners.

The Final Rule

Accordingly, the Parole Commission adopts the following amendments to 28 CFR part 2:

PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR part 2, § 2.20, Chapter 3, Subchapter A, Paragraph 303 (Property Destruction Other Than as Listed Above) is amended by deleting subparagraph (b); redesignating subparagraphs (c) through (g) as subparagraphs (d) through (h) respectively; and by adding new subparagraphs (b) and (c) to read as follows:

* * * * *

(b) if damage of more than \$5,000,000 is caused, grade as Category Seven;

(c) if damage of more than \$1,000,000 but not more than \$5,000,000 is caused, grade as Category Six;

* * * * *

3. 28 CFR part 2, § 2.20, Chapter 3, Subchapter D, Paragraph 331 (Theft, Forgery, Fraud, Trafficking in Stolen Property, Interstate Transportation of Stolen Property, Receiving Stolen Property, * Embezzlement, and Related Offenses) is amended to delete subparagraph (a); to redesignate subparagraphs (b) through (g) as subparagraphs (c) through (h) respectively; and to add new subparagraphs (a) and (b) to read as follows:

* * * * *

(a) If the value of the property * is more than \$5,000,000, grade as Category Seven;

(b) If the value of the property * is more than \$1,000,000 but not more than \$5,000,000, grade as Category Six;

* * * * *

4. 28 CFR part 2, § 2.20, Chapter 3, Subchapter E, Paragraph 341 (Passing or Possession of Counterfeit Currency or Other Medium of Exchange*), is amended to delete subparagraph (a); to redesignate subparagraphs (b) through (e) as subparagraphs (c) through (f)

respectively; and to add new subparagraphs (a) and (b) as follows:

* * * * *

(a) If the face value of the currency or other medium of exchange is more than \$5,000,000, grade as Category Seven;

(b) If the face value of the currency or other medium of exchange is more than \$1,000,000 but not more than \$5,000,000, grade as Category Six;

* * * * *

5. 28 CFR part 2, § 2.20, Chapter 3, Subchapter F, Paragraph 363 (Insider Trading), is amended to delete subparagraph (a); to redesignate subparagraphs (b) through (f) as subparagraphs (c) through (g) respectively; and to add new subparagraphs (a) and (b) to read as follows:

* * * * *

(a) If the estimated economic impact is more than \$5,000,000, grade as Category Seven;

(b) If the estimated economic impact is more than \$1,000,000 but not more than \$5,000,000, grade as Category Six;

* * * * *

6. 28 CFR part 2, § 2.20, Chapter 5, Subchapter A, Paragraph 501 (Tax Evasion), is amended to delete subparagraph (a); to redesignate subparagraphs (b) through (f) as subparagraphs (c) through (g) respectively; and to add new subparagraphs (a) and (b) as follows:

* * * * *

(a) If the amount of tax evaded or evasion attempted is more than \$5,000,000, grade as Category Seven;

(b) If the amount of tax evaded or evasion attempted is more than \$1,000,000 but not more than \$5,000,000, grade as Category Six;

* * * * *

7. 28 CFR part 2, § 2.20, Chapter 11, Subchapter G, Paragraph 1161 (Reports on Monetary Instrument Transactions), is amended to delete subparagraph (a); to redesignate subparagraphs (b) through (d) as subparagraphs (c) through (e) respectively; and to add new subparagraphs (a) and (b) to read as follows:

* * * * *

(a) If extremely large scale (e.g., the estimated gross amount of currency involved is more than \$5,000,000), grade as Category Seven;

(b) If very large scale (e.g., the estimated gross amount of currency involved is more than \$1,000,000 but not more than \$5,000,000), grade as Category Six;

* * * * *

Dated: July 26, 1995.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 95-19311 Filed 8-7-95; 8:45 am]

BILLING CODE 4410-01-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA-103-FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions, a proposed amendment to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment includes changes to sections 480-03-19.816/817.102(e) of the Virginia program relative to the disposal of coal processing waste and underground development waste in mined-out areas. The amendment is intended to clarify what provisions of the coal mine waste disposal regulations apply when disposal of coal processing waste or underground development waste occurs in mined-out areas for the purpose of backfilling a disturbed area.

EFFECTIVE DATES: August 8, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Drawer 1217, Powell Valley Square Shopping Center, Room 220, route 23, Big Stone Gap, Virginia 24219, Telephone: (703) 523-4303.

SUPPLEMENTARY INFORMATION:

- I. Background on the Virginia Program.
- II. Submission of the Amendment.
- III. Director's Findings.
- IV. Summary and Disposition of Comments.
- V. Director's Decision.
- VI. Procedural Determinations.

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background information on the Virginia program including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085-61115). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.